

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CHARLES ALPINE,
TDJC NO. 1422624,**

Plaintiff,

v.

**KENDALL RICHERSON,
Warden, et al.,**

Defendants.

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Civil Action No. **3:18-CV-606-L**

ORDER

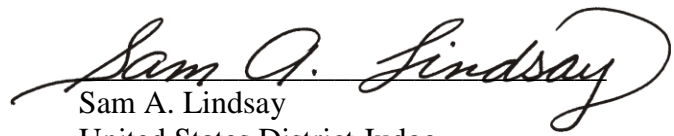
The case was referred to Magistrate Judge David L. Horan, who entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on March 16, 2018, recommending that the court summarily dismiss without prejudice this action pursuant to 28 U.S.C. § 1915(g), unless Plaintiff pays the full filing fee of \$400 within the time for filing objections to the Report or another deadline set by the court. In support of the Report, the magistrate judge notes that Plaintiff has filed three or more frivolous civil actions in federal court that were dismissed with prejudice, and that Plaintiff does not satisfy the imminent danger exception to the “three strikes” bar applicable to prisoner lawsuits. Report 2. No objections to the Report were filed.

After carefully reviewing the pleadings, file, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, **accepts** them as those of the court, and **dismisses without prejudice** this action pursuant to 28 U.S.C. § 1915(g) for failure to pay the required filing fee.

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The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Report, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Plaintiff, however, may challenge this finding pursuant to *Baugh v. Taylor*, by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of this order. The cost to file a motion to proceed on appeal with the Fifth Circuit is \$505. Because Plaintiff has accumulated three strikes, he cannot file any new lawsuit or appeal, as long as he is incarcerated, without first prepaying the filing fee, unless he can show that he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Plaintiff has not made the required showing of imminent danger of a serious physical injury in this case. Therefore, he cannot take advantage of the initial partial payment provision of Section 1915. Accordingly, if Plaintiff appeals, he must pay the \$505 fee in full immediately. As provided above, however, Plaintiff may challenge this determination by filing a separate motion to proceed *in forma pauperis* on appeal, with the Fifth Circuit, within 30 days of this order.

It is so ordered this 5th day of July, 2018.


Sam A. Lindsay
United States District Judge